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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AMENDMENT (NEW ZEALAND RULES OF ORIGIN) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Home Affairs,
the Honourable Brendan O'Connor MP)

CUSTOMS AMENDMENT (NEW ZEALAND RULES OF ORIGIN) BILL 2011

OUTLINE

1. The purpose of this Bill is to amend the *Customs Act 1901* (the Customs Act) to implement amendments to the rules of origin requirements under the Australia-New Zealand Closer Economic Relations Trade Agreement (the Agreement). These requirements are set out in Article 3 and Annex G to the Agreement. The amendments to the Customs Act implement the amendments to Article 3 of the Agreement. Amendments to the *Customs (New Zealand Rules of Origin) Regulations 2006* will implement the amendments to Annex G to the Agreement.
2. Specifically, the Bill will amend Division 1E of Part VIII of the Customs Act to:
 - (a) insert a new definition of 'aquaculture';
 - (b) amend the definition of 'manufacture';
 - (c) amend the definition of 'produce';
 - (d) amend the provisions dealing with 'wholly obtained goods';
 - (e) amend the provisions dealing with eligibility based on the last process of manufacture;
 - (f) insert a new section to provide that goods are not New Zealand originating goods merely because of the certain operations; and
 - (g) make consequential amendments to the verification powers in Division 4D of Part VI of the Customs Act.

FINANCIAL IMPACT STATEMENT

3. The Bill has no financial impact.

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NOTES ON CLAUSES

Clause 1 - Short title

1. This clause provides for the Bill, when enacted, to be cited as the *Customs Amendment (New Zealand Rules of Origin) Act 2011*.

Clause 2 - Commencement

2. Subclause (1) provides that each provision of this Act specified in column 1 of the table in that subclause commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table. This subclause also provides that any other statement in column 2 of the table has effect according to its terms.
3. Item 1 of the table provides that sections 1 to 3 and anything in this Act not elsewhere covered by the table will commence on the day on which the Act receives the Royal Assent.
4. Item 2 of the table provides that Schedule 1 commences on the later day of:
 - (a) the day on which the Act receives the Royal Assent; or
 - (b) the day on which the amendments of Article 3 of the Agreement, that were agreed to by Australia and New Zealand in 2010, enter into force. Australia agreed to these amendments to Article 3 by an exchange of letters between the Ministers for Trade for Australia and New Zealand in June 2010. The amendments would enter into force on the date when the governments of Australia and New Zealand notify each other by an exchange of notes that they have completed their respective domestic processes to bring the amendments into force. Australia will complete its domestic processes when this Bill receives the Royal Assent.

The Minister for Home Affairs must announce by notice in the *Gazette* the day on which the amendments enter into force.

Clause 3 - Schedule(s)

5. This clause is the formal enabling provision for the Schedule to the Bill, providing that each Act specified in a Schedule is amended in accordance with the applicable items of the Schedule. In this Bill, the Customs Act is being amended.
6. The clause also provides that the other items of the Schedules have effect according to their terms. This is a standard enabling clause for transitional, savings and application items in amending legislation.

SCHEDULE 1 – AMENDMENTS TO THE CUSTOMS ACT 1901

Part 1 – New Zealand originating goods

Customs Act 1901

Background

7. The Australia-New Zealand Closer Economic Relations Trade Agreement (the Agreement) is Australia's longest standing bilateral free trade agreement and originally came into force in 1983. The Agreement is a comprehensive and wide-ranging agreement that provides New Zealand and Australia with liberal access to each other's goods, services and investments markets. The Agreement re-affirms the close relationship between Australia and New Zealand.
8. On 1 January 2007, the Agreement's rules of origin provision underwent significant change to allow both the 'change in tariff classification' method and the 'regional value content' method to be used to determine whether goods are New Zealand originating goods. As part of the 2007 amendments to the Agreement, both Parties also agreed to conduct a review of the new rules of origin within three years of these new rules taking effect. This review, commenced in late 2008 and completed in March 2010, resulted in amendments to the text of Article 3 'Rules of Origin' and the related Product Specific Rules in Annex G to the Agreement.
9. The changes to the Agreement will reduce the administrative burden on business and will facilitate the eligibility for duty free entry of goods into both markets. The amendments will also provide greater consistency between the rules of origin in the Agreement and those in other free trade agreements entered into by Australia.
10. The amendments to the Customs Act implement the amendments to Article 3 of the Agreement. Amendments to the *Customs (New Zealand Rules of Origin) Regulations 2006* will implement the amendments to Annex G to the Agreement.

Item 1 – Section 153ZIA

11. Division 1E of Part VIII of the Customs Act sets out the rules for determining whether goods are New Zealand originating goods, and therefore eligible for a preferential rate of customs duty under the *Customs Tariff Act 1995* (the Customs Tariff Act).
12. Section 153ZIA sets out a simplified outline of Division 1E of Part VIII. This item omits and substitutes the simplified description of Subdivision B of Division 1E to take account of the amendments to this Subdivision by items 6, 7 and 8 below. The new simplified outline contains a reference to goods that are wholly obtained or produced in New Zealand or in New Zealand and Australia.

Item 2 – Section 153ZIA

13. This item amends the simplified outline by inserting a new simplified description of new Subdivision GA of Division 1E, inserted by item 10 below. New Subdivision GA

provides that goods are not New Zealand originating goods merely because of certain operations set out in new section 153ZIIA.

Item 3 – Subsection 153ZIB(1)

14. Subsection 153ZIB(1) of the Customs Act sets out the definitions for the purposes of Division 1E of Part VIII of the Customs Act. This item amends subsection 153ZIB(1) by inserting a new definition, 'aquaculture'.
15. 'Aquaculture' is defined as having the same meaning given by Article 3 to the Agreement. One of the agreed amendments to the Article 3 to the Agreement is the inclusion of a definition of 'aquaculture'. While aquaculture has been an eligible activity under the Agreement from 1 July 2007, the previous version of the Agreement did not include a specific definition of the term. This new definition will provide clarity and certainty as to the scope of this activity.
16. The new definition in Article 3 of the Agreement is:

'the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators'.

Item 4 – Subsection 153ZIB(1)(definition of manufacture)

17. This item amends subsection 153ZIB(1) by repealing and substituting the definition of 'manufacture'. The new definition provides that 'manufacture' means

'the creation of an article essentially different from the matters or substances that go into that creation'.
18. This definition of 'manufacture' is essentially the same as the current definition of 'manufacture' in subsection 153ZIB(1). However, the current definition also includes those activities that are not regarded as constituting manufacture, for example restoration or renovation processes. The definition, for ease of reading, merely removes these exclusions and they will be replicated in amendments to section 153ZII (see item 9 below) and in new section 153ZIIA (see item 10 below).
19. The definition of 'manufacture' is relevant for the purposes of Subdivision G of Part 1E of Part VII. This Subdivision contains the rules for determining whether goods, where the last process of *manufacture* is performed in New Zealand, are New Zealand originating goods. New Zealand originating goods are eligible for a preferential rate of customs duty when imported into Australia – in most cases, this rate is a 'Free' rate of duty.
20. The above amendment of the definition of 'manufacture' gives effect to the amendment of the same term in Article 3 of the Agreement.

Item 5 – Subsection 153ZIB(1) (definition of produce)

21. This item amends the definition of 'produce' in subsection 153ZIB(1) by omitting the reference to 'disassemble' and substituting 'restore or renovate'.

22. The definition of 'produce' is relevant to Subdivisions C and D of the Division 1E of Part VIII. Under these Subdivisions, goods are 'New Zealand originating goods' if they are *produced* entirely in New Zealand, or entirely in New Zealand and Australia, from originating materials and non-originating materials (and all of the other relevant requirements of Division 1E are satisfied).
23. Prior to the amendments to Article 3 of the Agreement, the activity of disassembling was a process of production. Under the amended Article 3, disassembling is no longer an eligible activity of production because the Parties to the Agreement considered that the mere disassembly of a product does not constitute substantial transformation.
24. However, the Parties agreed to include in the Article 3 the processes of restoration in the list of activities that constitute production. This would allow businesses that undertake restoration and renovation processes to potentially qualify for origin where adding sufficient value to meet a regional value content rule through these processes constitutes substantial transformation.
25. The amendments to the definition of 'produce' give effect to the amendments of the same term in Article 3 of the Agreement.

Items 6, 7 and 8 – Subdivision B of Division 1E (Goods wholly obtained)

26. These items amend various provisions in Subdivision B of Division 1E by inserting after all references to 'obtained' the phrase 'or produced'
27. Subdivision 1B sets out the circumstances in which goods are wholly obtained in New Zealand or in New Zealand and Australia. Wholly obtained goods are New Zealand originating goods. The circumstances are a mix of mining, primary production and fishing but also include production activities that are associated with these activities. For example, fish taken from the sea by New Zealand registered ships are wholly obtained goods, as are goods produced from such fish (see paragraphs 153ZIC(2)(f) and (g)).
28. The purpose of the amendments in items 6, 7 and 8 is merely to ensure the use of consistent language across Subdivision B of Division 1E. The amendment in item 6 repeals and substitutes the heading to Subdivision B to insert a reference to 'or produced' in this heading. The amendments in item 7 and 8 insert the phrase 'or produced' after references to 'obtained', with the effect that goods are New Zealand originating goods if they are *wholly obtained or produced* in New Zealand or in New Zealand and Australia. These amendments do not materially change the policy in relation to wholly obtained goods.
29. These amendments give effect to the same amendments to Article 3 of the Agreement.

Item 9 – After paragraph 153ZII(1)(a)

30. This item amends section 153ZII of the Customs Act by inserting a new paragraph (1)(aa).

31. Section 153ZII is contained in Subdivision G of Part 1E of Part VII. As mentioned above, this Subdivision contains the rules for determining whether goods, where the last process of *manufacture* is performed in New Zealand, are New Zealand originating goods.
32. Currently, subsection 153ZII(1) provides that goods are New Zealand originating goods if the last process of their manufacture was performed in New Zealand (paragraph (1)(a)) and the qualifying expenditure is at least 50% of the factory cost of the goods (paragraph (1)(b)).
33. New paragraph (1)(aa) provides that the last process of manufacture cannot be a restoration or renovation process, such as repairing, reconditioning, overhauling or refurbishing. This new paragraph merely recreates one of the exemptions from the definition of 'manufacture', which by item 4 above removes from the definition.
34. Note that Subdivision G of Part 1E is repealed with effect from 1 January 2012, in accordance with section 153ZIJ of the Customs Act.
35. These amendments give effect to the same amendments to Article 3 of the Agreement.

Item 10 – After Subdivision G of Division 1E of Part VIII

36. This item amends Division 1E of Part VIII by inserting new Subdivision GA. This new Subdivision will comprise of new section 153ZIIA only.
37. New section 153ZIIA sets out the non-qualifying operations for the purposes of Division 1E. New subsection 153ZIIA(1) provides that goods are not New Zealand originating goods under Division 1E merely because of the following:
 - (a) operations to preserve goods in good condition for the purpose of storage or transport;
 - (b) disassembly of goods;
 - (c) affixing of marks, labels or other similar distinguishing signs on goods or their packaging;
 - (d) packaging, changes to packaging, the breaking up or assembly of packages or presenting goods for transport or sale;
 - (e) quality control inspections;
 - (f) any combination of operations referred to in paragraphs (a) to (e).

Therefore, if any of these operations are the only operations that take place in New Zealand or New Zealand and Australia, in relation to goods (either alone or as a combination), this will not amount to production or manufacture of goods.

38. Paragraphs (d) and (e) recreate the other two exemptions from the definition of 'manufacture' which by item 4 above removes from the definition. In addition, paragraph (b) reflects the removal of 'disassembly' from the definition of 'produce' in item 5 above.

39. New subsection 153ZIIA(2) provides this section applies despite any other provision of Division 1E.
40. This new section gives effect to the new paragraphs 10 and 11 of Article 3 of the Agreement.

Item 11 – Application

41. Item 11 provides that the amendment made by Part 1 apply in relation to:
 - (a) goods imported into Australia on or after the commencement of Part 1; and
 - (b) goods imported in Australia before that the commencement of Part 1, where the time for working out the rate of import duty on the goods had not occurred before the commencement of Part 1. Paragraph (b) means that if goods are imported from New Zealand before the commencement date and are still in a Customs licensed warehouse on that date, the new rules set out in Part 1 will also apply to them.

Part 2 – Verification powers

Customs Act 1901

Background

42. Division 4D of Part VI of the Customs Act sets out the obligations, including record keeping obligations, that apply to people in Australia who export goods to New Zealand and who wish to obtain preferential treatment in respect of the goods in New Zealand. Obligations are also imposed on people who produce or manufacture such goods.
43. Division 4D contains several definitions that are the same or similar to definitions in Division 1E of Part VIII of the Customs Act, or that contain terms that are defined in Division 1E. As a consequence of the amendments to such definitions in Division 1E of Part VIII, provisions in Division 4D of Part VI require amendment.

Item 12 – Section 126AJA (definition of manufacture)

44. This item repeals and substitutes the definition of ‘manufacture’ in section 126AJA. The new definition will be the same as the new definition of ‘manufacture’ in Division 1E of Part VIII.

Item 13 – Section 126AJA (at the end of the definition of principal manufacturer)

45. This item amends the definition of principal ‘manufacturer’ to add at the end the phrase ‘where that last process was not a restoration or renovation process such a repairing, reconditioning, overhauling or refurbishing’. This amendment reflects that changes to section 153ZII and the definition of ‘manufacture’ in subsection 153ZIB(1) in items 9 and 4 above.

Item 14 – Section 126AJA (definition of producer)

46. This item amends the definition of ‘producer’ by omitting the reference to ‘or disassembles’ and inserting ‘restores or renovates’. These amendments reflects the amendments to the definition of ‘produce’ in subsection 153ZIB(1) in item 5 above.

Item 15 – Application

47. This item provides that the amendments made by Part 2 apply in relation to goods exported to New Zealand on or after the commencement of Part 2 (whether or not the good were produced or manufactured before, on or after that day).